IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10272 of 2001

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VADODARA MUNICIPAL

Versus

JAGRUTI RAMESHCHANDRA PANDYA

Appearance:

MR PRANAV G DESAI for Petitioner No. 1

MR RD RAVAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/07/2004

ORAL JUDGEMENT

1. This matter was earlier listed for hearing on 1st July 2004 and it was adjourned to today. Today even in the second round Mr. Raval for the respondent is not present.

2. The petitioner Corporation has challenged the judgement and award dated 8.2.2001 passed by the Labour

Court, Vadodara, in Reference (LCV) No.399 of 1991.

3. The respondent raised an industrial dispute against the present petitioner Corporation which dispute was ultimately referred to Labour Court, Vadodara. The said proceeding was registered as Reference (LCV) No.399/91. After hearing both the sides the Labour Court, Vadodara, vide judgement and award dated 8th February 2001 allowed the Reference and directed the petitioner Corporation to reinstate the respondent in service without backwages. It is against the said judgement and award the present petition has been filed.

4. Mr. Desai, learned counsel for the petitioner submitted that the respondent was never a regular employee of the Corporation. According to the Corporation the respondent was working with the petitioner Corporation on contract basis. He submitted that the respondent had worked only 2 days in May 1984 and 20 days in June 1984 and therefore she had not put in total 240 days work in any year and therefore she is not entitled to any relief. He further submitted that after the year 1984 the respondent was working with the Contractor upto the year 1988 and the Contractor was not joined as a party to the proceedings. According to the learned counsel, the Labour Court has grossly erred in allowing the Reference on the ground that it was the duty of the employer to prove that the workman has not worked 240 days in his employment.

5. I have carefully perused the relevant documents on record. The petition has been admitted on 15th December 2003 and while admitting the matter the Court has granted stay in terms of para 8(D) of the petition and therefore the respondent was not taken in service. No reply has been filed on behalf of the respondent.

6. From the record it emerges that even according to the respondent she had worked with the petitioner Corporation only in the year 1984 and thereafter she was working with the Contractor. However, the contractor was not made party to the proceedings. There is nothing on record to suggest that the respondent has put in 240 days service with the petitioner Corporation. Service rendered with the contractor, even if proved, cannot be said to be the service rendered with the petitioner Corporation. The Labour Court has emphasized on the point that it was the duty of the petitioner Corporation to prove that the respondent has not worked for 240 days in a year. In this connection Mr. Desai has relied upon a decision of the Apex Court in the case of Range Forest

Officer Vs. S.T. Hadimani, reported in (2002)3 SCC 25 wherein it is held that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it was for the claimant to lead evidence to that effect.

7. Mr. Desai has also drawn my attention to Annexure-B to the petition wherein it is clearly shown that the respondent has never worked after June 1984. It is also required to be noted that the reference has been filed only in the year 1991.

8. In view of the above, it is clear that the finding of the Labour Court is perverse and the Labour Court has clearly committed an error in directing to reinstate the workman in service. Therefore, the impugned judgement and award requires to be set aside.

9. In the result, the petition is allowed. The impugned judgement and award dated 8.2.2001 passed by the Labour Court, Vadodara, in Reference (LCV) No.399 of 1991 is hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]
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